

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JAN 12 2004

UNITED STATES OF AMERICA for the
use of KAUFMAN FIRE PROTECTION SYSTEMS, INC.,
a New Mexico corporation,

Use Plaintiff,

Robert M. March
CLERK

v.

CIV-02-1091 WJ/RHS

GUARANTEE COMPANY OF NORTH
AMERICA, USA, a Texas corporation, and
MENENDEZ-DONNELL & ASSOCIATES, INC.,
a Texas corporation,

Defendants.

**PLAINTIFF'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Proposed Findings of Fact.

1. Kaufman was the fire sprinkler subcontractor to Menendez on an Indian school dormitory remodel construction job in western New Mexico. (mutually approved)
2. The contract between Menendez and Kaufman dated 11, 2002 provided that Kaufman install the fire sprinkler protection systems for \$49,524.00 (Exhibit #7). (mutually approved)
3. While the contract provided that "the installation needs to be completed and ready to use before the schoolchildren begin to use the dormitory", and that time was of the essence, the contract also provided that installation could occur "during subsequent weekends", i.e., after school started.
4. Also, a teaming agreement entered into between Kaufman and Menendez on June 12, 2002 provided that completion could occur "prior to school start, or late August, 2002" (Exhibit #1).

5. Kaufman was a few days away from completion before school started, and Menendez terminated the contract on August 13, 2002 (Exhibit #12).

6. In the termination letter, Menendez refers to August 12, 2002. Nowhere in the contract document or the teaming agreement is August 12, 2002 mentioned. (mutually approved)

7. Kaufman could have completed work under the contract before school started or in subsequent weekends or by late August consistent with the contract and teaming agreement but for the termination by Menendez.

8. Kaufman performed all work in a workman-like manner.

9. Menendez has not paid Kaufman any of the \$49,524.00 owed under the contract. (mutually approved)

10. Kaufman has performed work for which it has not been paid. (mutually approved)

11. Menendez' bonding company is Defendant Guarantee Company of North America, and the job was bonded by Guarantec. (mutually approved)

Proposed Conclusions of Law:

1. Menendez breached its contract with Kaufman by terminating the contract on August 13, 2002 because Kaufman could have completed the contract within the terms of the contract and teaming agreement.

2. Judgment is entered against Menendez and Guarantee in the amount of \$49,524.00.

3. Kaufman is entitled to recover its costs and interest on the \$49,524.00 since August 13, 2002.

Respectfully submitted by:

BINGHAM, HURST, APODACA, & WILE, P.C.

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I hereby certify that a true copy of the foregoing was sent via telefacsimile and first class mail to counsel of record as follows on this 9th day of January, 2009:

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